UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,705	12/10/2001	Eiji Ujyo	1095.1205	3637

21171   7590   07/10/2006

STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER
BENGZON, GREG C

ART UNIT	PAPER NUMBER
2144	

DATE MAILED: 07/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/006,705	UJYO ET AL.
	Examiner	Art Unit	
	Greg Bengzon	2144	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _19 April 2006_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-3,6-8 and 13-15_ is/are pending in the application.

  4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-3, 6-8,13-15_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a)☐ All   b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

DETAILED ACTION

This application has been examined. Claims 1-3, 6-8, 13-15 are pending.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

04/19/2006 has been entered.

Priority

The effective date of the subject matter claimed in the application is December

18, 2000.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 6-8, 13-15 rejected under 35 U.S.C. 103(a) as being unpatentable

over Gemmell (US Patent 6678855) in view of Chiu et al (US Patent 6505253),

hereinafter referred to as Chiu.

Gemmell disclosed (re. Claims 1) generating groups of data, each including at

least one data packet from a given set of data packets to be delivered (Gemmell –

Figure 15, Column 4 Lines 40-45) ; (re. Claims 1) repeating delivery of each of the

groups as many times as specified by said determining (Gemmell – Column 2 Lines 25-

35, Column 7 Lines 25-30); (re. Claims 1) determining a number of times each of the

groups is delivered; (Gemmell – Column 7 Lines 25-30, Column 12 Lines 40-45);

However Gemmell (re. Claim 1) did not disclose wherein the delivery destinations

respond to the delivery of groups of packets.

Chiu disclosed (re. Claim 1) wherein the delivery destinations respond to the

delivery of groups of packets (Chiu- Column 18 Lines 10-15) according to a ACK

interval (Chiu- Column 35 Lines 65) and also according to randomly selected timing

(Chiu-Column 3 Lines 10-15) to prevent too many ACK messages from reaching the

transmitting station at the same time (Column 8 Lines 15-20).

Gemmell and Chiu are analogous art because they present concepts and

practices regarding reliable transmission methods for multicasting, while accounting for

the congestion rates in the network. (Gemmell – Column 1 Lines 45-50, Column 4 Lines

15-25; Chiu – Column 11 Lines 60-65) At the time of the invention it would have been obvious to a person of ordinary skill in the art to combine the teachings of Chiu into methods and system of Gemmell. The motivation for said combination would be, as Chiu suggests (Chiu – Column 9 Lines 35-40), the transmission rate should be high so as to fully use the bandwidth of the network, and should be sufficiently low that packets are not lost due to congestion, or to the inability of a receiver station to keep up with the transmitter.

Gemmell-Chiu disclosed (re. Claim 2) wherein the group generating determines a number of data packets (Chiu-Column 18 Lines 15-20) included in each group (Gemmell – Column 3 Lines 55-60). The motivation to combine Chiu into Gemmell is the same as Claim 1.

Gemmell-Chiu disclosed (re. Claim 3) wherein the group generating unit determines the total amount of data (Chiu-Column 39 30-50) included in each of data packets included in each group (Gemmell – Column 3 Lines 55-60) according to the state of a communication line or delivery destination (Chiu- Column 39 Lines 40-50). The motivation to combine Chiu into Gemmell is the same as Claim 1.

Gemmell-Chiu disclosed (re. Claim 6) measuring a congestion state of a system based on time needed for accessing a memory and the state of the load on a processor (Chiu - Figures 5-6, Column 13 Lines 40-50, Column 15 Lines 45-50). The motivation to combine Chiu into Gemmell is the same as Claim 1.

Gemmell-Chiu disclosed (re. Claim 7) redelivering a previously delivered data packet when one of the delivery destinations has reported that the data packet could not be received. (Chiu – Column 16 Lines 20-25) The motivation to combine Chiu into Gemmell is the same as Claim 1.

Claim 8 is rejected on the same basis as Claim 1.

Gemmell substantially disclosed Claim 13. In addition, Gemmell disclosed (re. Claim 13) specifying a number of delivery destinations to which data is to be delivered (Gemmell – Column 7 Lines 1-5);

With respect to Claim 13, Gemmell did not disclose estimating a processing time required to handle each single response from the delivery destinations; calculating a total response processing time; delivering control information including the total response processing time, to the delivery destinations so that the delivery destinations will respond at a randomly selected timing within the total response processing time after each group of data packets are received.

Chiu disclosed a rate control mechanism for multicast transmission. Chiu disclosed (re. Claim 13) , estimating a processing time (Chiu – Column 35 Lines 35-40 'TTL scope', Column 16 Lines 30-35) required to handle each single response from the delivery destinations (Chiu-Column 22 Lines 25-30) ;   (re. Claim 13) calculating a total response processing time; (Chiu – Chiu – Column 35 Lines 35-40, Column 16 Lines 30-35) (re. Claim 13) delivering control information (Chiu- Column 35 Lines 45-60) including the total response processing time, (Chiu – Column 35 Lines 60-65, Column 39 Lines 30-35) to the delivery destinations so that the delivery destinations will respond at a randomly selected timing (Chiu-Column 3 Lines 10-15) within the total response processing time (Chiu – Column 35 Lines 35-40 'TTL scope', Column 16 Lines 30-35) after each group of data packets are received ;

Gemmell and Chiu are analogous art because they present concepts and practices regarding reliable transmission methods for multicasting, while accounting for the congestion rates in the network. (Gemmell – Column 1 Lines 45-50, Column 4 Lines 15-25; Chiu – Column 11 Lines 60-65) At the time of the invention it would have been obvious to a person of ordinary skill in the art to combine the teachings of Chiu into methods and system of Gemmell. The suggested motivation would be, as Chiu suggests (Chiu – Column 9 Lines 35-40), the transmission rate should be high so as to fully use the bandwidth of the network, and should be sufficiently low that packets are not lost due to congestion, or to the inability of a receiver station to keep up with the transmitter.

Gemmell-Chiu disclosed (re. Claim 14) further comprising repetitively delivering

(Gemmell – Column 7 Lines 25-30) the groups before the delivery destinations respond

to delivery (Chiu- Column 18 Lines 10-15) ;

Gemmell-Chiu disclosed (re. Claim 15) wherein a number of times each of the

groups generated by the group generating unit is delivered is greater than one

(Gemmell – Column 7 Lines 25-30, Column 12 Lines 40-45);

Response to Arguments

The Applicant presents the following argument(s) as presented in the After Final

amendments filed 02/23/2006 [*in italics*]:

Claim 1 recites: "determining a number of times greater than one that each of the

groups should be transmitted repetitively before the delivery destinations respond to

delivery" (claim 1, lines 5-6). The Office Action ignored this limitation; nothing was cited

or found in Gemmell that teaches or suggests the determining limitation of claim 1.

The Examiner respectfully disagrees with the Applicant. Gemmell (Column 7

Lines 25-30) disclosed a data carousel scheme wherein the sender loop continuously

either ad infinitum, or until a certain [pre-determined] condition is met.

The Applicant presents the following argument(s) [*in italics*]:

'*...the Office Action failed to establish a case of prima facie obviousness in regard to the stated grounds of rejection because in the discussion of the rejection of claim 1 there was no mention of the Chiu reference.*'

The USC 103 rejection, as presented above, has presented obvious reason to combine Chiu with Gemmell.

The Applicant presents the following argument(s) [*in italics*]:

'*an average data transmission speed is calculated, not "a total response processing time"*'

The Examiner notes that there are several embodiments of total response time disclosed by Chiu, as presented above. In the cited portion of Chiu, Chiu allows the sender to '*specify ...the duration within which the transfer has to take place*', said duration being the equivalent of '*total response processing time*'. Furthermore, in order to calculate the average data transmission speed, it would have been necessary to calculate the total response processing time.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.
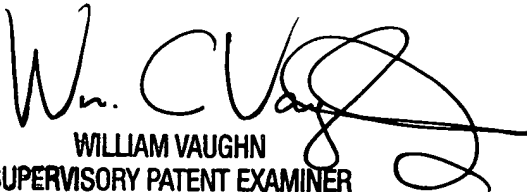
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Bengzon whose telephone number is (571) 272-3944. The examiner can normally be reached on Mon. thru Fri. 8 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571)272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

gcb

WILLIAM VAUGHN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100